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February 1, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Secretary's Office
Federal Communications Commission
445 Twelfth Street, S.W.
TW-A325 - Twelfth Street Lobby
Washington, D.C. 20554

Re: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act;

EX PARTE PRESENTATION

CS Docket No. 98-201
RM No. 9335
RM No. 9345

Dear Ms. Salas:

The purpose of this letter is to inform you that on January 28, 1999, Karen E. Watson, Director of Government Relations, and Pantelis Michalopoulos, counsel for EchoStar Communications Corporation ("EchoStar") and Jay Downen, Vice President, External Affairs, and the undersigned counsel for the National Rural Telecommunications Cooperative ("NRTC"), met with the following members of the Office of the General Counsel, Christopher J. Wright, General Counsel, Joel Kaufman, Assistant General Counsel and Paula Silberthau, Staff Attorney.

The parties discussed issues raised in their Comments and Reply Comments in the above-captioned proceeding. During the meeting, members of the FCC staff noted their concern over

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the Commission's authority to define "Grade B" signal strength, solely for purposes of the Satellite Home Viewer Act, differently than the definition found in 47 C.F.R. §73.683(a). In response to the questions raised by the Commission staff, on January 29, 1999, the undersigned faxed to the General Counsel's Office on behalf of NRTC the attached memorandum citing cases supporting an agency's ability to define the same term differently for different purposes.

In accordance with Section 1.1206 of the Commission's rules, enclosed is an original and two copies of this letter and the memorandum faxed to the General Counsel's Office. Should the Commission require further information, please contact the undersigned at (202) 434-4210.

Sincerely,

Jack Richards

Enclosures

cc: (with enclosures)

Christopher J. Wright, General Counsel
Joel Kaufman, Assistant General Counsel
Paula Silberthau, Staff Attorney
Pantelis Michalopolous

Different Interpretations/Definitions of Same Terms

FCC's Station Control Rules

- In a proceeding to establish regulatory symmetry between like services, the Commission noted that its interpretation of rules regarding station management and control, which stem from the Prohibition of Section 310(d) of the Communications Act against unauthorized transfers of control by all Commission licensees, has varied in the context of specific common carrier and private radio services. See Third Report and Order, GN Docket No. 93-252, PR Docket No. 93-144, PR Docket No. 89-553, 9 FCC Rcd 7988, ¶226 (1994).

- The Commission cited to two cases to demonstrate its different interpretation of the Communications Act's unauthorized transfer of control prohibition. It compared Intermountain Microwave, 24 RR2d 983 (1963)(six-prong test of control for common carrier services) and Applications of Motorola, Inc., File No. 507505, Order, para. 14 (July 30, 1985), announced by FCC News Release No. 6440 (Aug. 15, 1985)(test of control for SMR services). See Id. n. 434.

United States v. Bishop, 93 S.Ct. 2008, 2015(1973)

- The Court stated that, "[i]t would be possible, of course, that the word 'willfully' was intended by Congress to have a meaning in §7206(1) different from its meaning in §7207 . . . ."

Aquarius Marine Co. v. Pena, 64 F.3d 82 (1995)

- The Court of Appeals found that the Coast Guard and the Maritime Administration had discretion to undertake different interpretations of the term "rebuilt" in different sections of statutes for which they had respective authority to administer.

- The Coast Guard defined the term "rebuilt" as it appeared in one section of the Merchant Marine Act for the purpose of coastwide trade provisions differently from the Maritime Administration's definition of "rebuilt" as it appeared in another section of the Merchant Marine Act for the purpose of awarding preferences for carriage of government-sponsored cargo.

- In its analysis, the Court of Appeals found that Congress did not impose a requirement of uniformity in the interpretation of the term "rebuilt". See 64 F.3d at 88.

- The Court of Appeals cites to Abbott Labs. v. Young, 920 F.2d 984, 987 (D.C. Cir.

1990)(stating, "it is not impermissible under Chevron for an agency to interpret [the same] imprecise term differently in two separate sections of a statute which have different purposes."), cert. denied, 502 U.S. 819, 112 S.Ct. 76, 116 L.Ed. 49 (1991). See 64 F.3d at 88.

Georgacarakos v. United States, 7 F.3d 218, 1993 WL 378654 (1st Cir. (Me.) 1993)

- The issue presented to the Court of Appeals was whether Congress' definition of "crime of violence" in 28 U.S.C. §2901(c) precluded the Sentencing Commission, in accordance with Congress' directive in 28 U.S.C. §994(a), from promulgating sentencing guidelines containing a different definition of "crime of violence".

- The Court of Appeals determined that the two different definitions of "crime of violence" were permissible. It stated, "[s]ection 2901's definition of 'crime of violence' '[a]s used in this chapter' did not preclude Congress from choosing to define the term differently in a different context."

Cleveland Institute of Electronics, Inc. v. United States, 787 F. Supp. 741 (N.D. Ohio Eastern Division 1992)

- The issue before the court was whether the educational courses sold by the Cleveland Institute of Electronics' sales persons are "consumer products" within the context of 26 U.S.C. §3508.

- In its analysis, the court noted that Congress used the term "consumer products" in four other statutes and that the terms were defined differently in each statute. The court stated, "[i]t is clear that Congress has treated the meaning of the phrase "consumer products" as malleable, changing its significance to meet the purpose of the statute in which the term is employed. In fact, Congress has defined "consumer products" differently every time it has used the term -- except once." 787 F.Supp at 747.

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